

Assembly Hearing Slip

(Please print plainly)

Date: 9-8-95
Bill No. Or Subject: Right to Farm
(Name): John Breder
(Street Address or Route Number): R2 Box 196
(City & Zip Code): Sauk City Wisc
(Representing): self

Speaking In favor:
Speaking against:
Registering In favor:
Registering against:
Speaking for Information only; Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 210 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 9-8-95
Bill No. Or Subject: AB546
(Name): REP KLUSMAN & WARD
(Street Address or Route Number):
(City & Zip Code):
(Representing):

Speaking In favor:
Speaking against:
Registering In favor:
Registering against:
Speaking for Information only; Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 210 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 9/8/95
Bill No. Or Subject: AB-6-Farm
(Name): Laura Beane
(Street Address or Route Number): WMSI Co. J
(City & Zip Code): Ft. Atkinson, WI 53538
(Representing): self - Halviro Farms

Speaking In favor:
Speaking against:
Registering In favor:
Registering against:
Speaking for Information only; Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 210 West
State Capitol
Madison, WI 53702

AB546 50A

Assembly Hearing Slip

(Please print plainly)

Date: 9-8-95
Bill No. Or Subject: Right to Farm
(Name): Pete Kirchner
(Street Address or Route Number): N10251 Kirchner Rd
(City & Zip Code): Clintonville WI 54929
(Representing): Self

Speaking in favor:
Speaking against:
Registering in favor:
Registering against:
Speaking for information only; Neither for nor against:

Please return this slip to a messenger promptly.
Assembly Sergeant at Arms
Room 210 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 9-8-95
Bill No. Or Subject: Right to Farm
(Name): Mary Kirchner
(Street Address or Route Number): N10251 Kirchner Rd
(City & Zip Code): Clintonville, WI 54929
(Representing): Self

Speaking in favor:
Speaking against:
Registering in favor:
Registering against:
Speaking for information only; Neither for nor against:

Please return this slip to a messenger promptly.
Assembly Sergeant at Arms
Room 210 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 9/1
Bill No. Or Subject: AB 546
(Name): Joe TREONING
(Street Address or Route Number):
(City & Zip Code): Dept of Ag Trade, Consumer Pro
(Representing):

Speaking in favor:
Speaking against:
Registering in favor:
Registering against:
Speaking for information only; Neither for nor against:

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Assembly Sergeant at Arms
Room 210 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 9/8/95
Bill No. AB 546
Or
Subject
(Name) Sim Kurtz
(Street Address or Route Number) 101 So Webster
(City & Zip Code) Madison
(Representing) DNR

- Speaking in favor: [checked]
Speaking against: []
Registering in favor: []
Registering against: []
Speaking for information only; Neither for nor against: []

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 210 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date:
Bill No. AB 546
Or
Subject
(Name) Paul Zimmerman
(Street Address or Route Number) 7010 Mineral Point Road
(City & Zip Code) Madison WI 53705
(Representing) Wisconsin Farm Bureau

- Speaking in favor: [checked]
Speaking against: []
Registering in favor: []
Registering against: []
Speaking for information only; Neither for nor against: []

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 210 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date:
Bill No. AB 546
Or
Subject
(Name) Robert Lusenders
(Street Address or Route Number) 563 W 33794 Hwy 59
(City & Zip Code) North Prairie 53153
(Representing) Self Farmer

- Speaking in favor: [checked]
Speaking against: []
Registering in favor: []
Registering against: []
Speaking for information only; Neither for nor against: []

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 210 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: Harland Brook
Bill No. Right To Farm
Or
Subject

Harland Brook
(Name)
2727 Yellowstone Dr.
(Street Address or Route Number)
Milladore 54254
(City & Zip Code)
(Representing)

- Speaking In favor:
- Speaking against:
- Registering In favor:
- Registering against:
- Speaking for Information only; Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 210 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: _____
Bill No. _____
Or
Subject _____

Mike Dummer
(Name)
N6613 CTH X X
(Street Address or Route Number)
Holmes WI 54636
(City & Zip Code)
NFO Grow Farms operation
(Representing)

- Speaking In favor:
- Speaking against:
- Registering In favor:
- Registering against:
- Speaking for Information only; Neither for nor against:

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Assembly Sergeant at Arms
Room 210 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 9/8/95
Bill No. _____
Or
Subject Right to Farm

Robert Wildeemuth
(Name)
1001 S. Clinton Corners Rd
(Street Address or Route Number)
Clinton WI
(City & Zip Code)
National Farmers Organization
(Representing)

- Speaking In favor:
- Speaking against:
- Registering In favor:
- Registering against:
- Speaking for Information only; Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 210 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 4-8-95

Bill No. Or Subject: Right To Farm

Subject: _____

(Name): Mark Castell

(Street Address or Route Number): _____

(City & Zip Code): _____

(Representing): Wis. Farmers Union

Speaking In favor:

Speaking against:

Registering In favor:

Registering against:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 210 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 9/8/93

Bill No. Or Subject: Right to Farm

(Name): Russ Weyersell

(Street Address or Route Number): 2317 International Blvd #109

(City & Zip Code): Madison WI 53704

(Representing): _____

Speaking In favor:

Speaking against:

Registering In favor:

Registering against:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 210 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: Sept 8, 1995

Bill No. Or Subject: Right to Farm

(Name): Ron Kuehn

(Street Address or Route Number): Z E. MIFFLIN ST. #600

(City & Zip Code): MADISON, WI

(Representing): 1. WI Potato & Vegetable Growers
2. (Representing) WI PORK PRODUCERS
3. WI CRANBERRY GROWERS

Speaking In favor:

Speaking against:

Registering In favor:

Registering against:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 210 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 8 SEP 95
Bill No. AB-546 / LRB-3953
Or
Subject

(Name) Sen. Dave Zien
(Street Address or Route Number) 23^d Senate District
(City & Zip Code)
(Representing)

Speaking In favor:
Speaking against:
Registering In favor:
Registering against:
Speaking for Information only; Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 210 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 9-9-95
Bill No. Right to Farm
Or
Subject

(Name) Dean Zuberger
(Street Address or Route Number) P.O. Box 300
(City & Zip Code) Antigo, WI
(Representing) WI Potato & Veg Growers

Speaking In favor:
Speaking against:
Registering In favor:
Registering against:
Speaking for Information only; Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 210 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 9/8
Bill No. AB 546?
Or
Subject Right to Farm

(Name) Ron Stork
(Street Address or Route Number) P.O. Box 663
(City & Zip Code) Sauk City 53583
(Representing) Wis. NFO

Speaking In favor:
Speaking against:
Registering In favor:
Registering against:
Speaking for Information only; Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 210 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: Sept 8

Bill No. AB 546

Or
Subject

John Manske

(Name)

30 W. Milwaukee

(Street Address or Route Number)

Madison, WI 53703

(City & Zip Code)

WI Federation of Co-ops

(Representing)

Speaking in favor:

Speaking against:

Registering in favor:

Registering against:

Speaking for information only:

Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 210 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 9/8/95

Bill No.

Or
Subject Right to Farm

Draig Pearce

(Name)

W231 Hwy J

(Street Address or Route Number)

St. Franken 5638

(City & Zip Code)

Self - Hoffman's Farms

(Representing)

Speaking in favor:

Speaking against:

Registering in favor:

Registering against:

Speaking for information only:

Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 210 West
State Capitol
Madison, WI 53702

Assembly Committee on Agriculture

DATE 9-21-95

Moved by Gronemus Seconded by Otte

AB 546 SB _____ Clearinghouse Rule _____

AJR _____ SJR _____ Appointment _____

A _____ SR _____ Other _____

A/S Amdt _____

A/S Amdt _____ to A/S Amdt _____

A/S Sub Amdt 0229/1 (1)

A/S Amdt _____ to A/S Sub Amdt _____

A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for:

- Passage
- Introduction
- Adoption
- Rejection

- Indefinite Postponement
- Tabling
- Concurrence
- Nonconcurrence
- Confirmation

| | Committee Member | Aye | No | Absent | Not Voting |
|--------|--------------------------|-----|----|--------|------------|
| 1. | Ott, Alvin (Chair) | ✓ | | | |
| 2. | Ward, David (Vice-Chair) | ✓ | | | |
| 3. | Ainsworth, John | ✓ | | | |
| 4. | Zukowski, Robert | ✓ | | | |
| 5. | Otte, Clifford | ✓ | | | |
| 6. | Skindrud, Richard | ✓ | | | |
| 7. | Hahn, Eugene | ✓ | | | |
| 8. | Olsen, Luther | ✓ | | | |
| 9. | Gronemus, Barbara | ✓ | | | |
| 10. | Baldus, Al | ✓ | | | |
| 11. | Reynolds, Martin | ✓ | | | |
| 12. | Springer, Thomas | ✓ | | | |
| 13. | Wilder, Michael | ✓ | | | |
| 14. | Dueholm, Robert | | ✓ | | |
| 15. | | | | | |
| 16. | | | | | |
| 17. | | | | | |
| 18. | | | | | |
| Totals | | 13 | 1 | | |

MOTION CARRIED

MOTION FAILED

Assembly Committee on Agriculture

DATE 9-21-95

Moved by Ward Seconded by Zuk

AB 546 SB _____ Clearinghouse Rule _____

AJR _____ SJR _____ Appointment _____

A _____ SR _____ Other _____

A/S Amdt _____

A/S Amdt _____ to A/S Amdt _____

(A) A/S Sub Amdt LRB50229/1 (1)

A/S Amdt _____ to A/S Sub Amdt _____

A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for:

- Passage
- Introduction
- Adoption
- Rejection

- Indefinite Postponement
- Tabling
- Concurrence
- Nonconcurrence
- Confirmation

| | Committee Member | Aye | No | Absent | Not Voting |
|--------|--------------------------|-----|----|--------|------------|
| 1. | Ott, Alvin (Chair) | ✓ | | | |
| 2. | Ward, David (Vice-Chair) | ✓ | | | |
| 3. | Ainsworth, John | ✓ | | | |
| 4. | Zukowski, Robert | ✓ | | | |
| 5. | Otte, Clifford | ✓ | | | |
| 6. | Skindrud, Richard | ✓ | | | |
| 7. | Hahn, Eugene | ✓ | | | |
| 8. | Olsen, Luther | ✓ | | | |
| 9. | Gronemus, Barbara | ✓ | | | |
| 10. | Baldus, Al | ✓ | | | |
| 11. | Reynolds, Martin | ✓ | | | |
| 12. | Springer, Thomas | ✓ | | | |
| 13. | Wilder, Michael | ✓ | | | |
| 14. | Dueholm, Robert | | ✓ | | |
| 15. | | | | | |
| 16. | | | | | |
| 17. | | | | | |
| 18. | | | | | |
| Totals | | 13 | 1 | 0 | 0 |

MOTION CARRIED

MOTION FAILED

Assembly Committee on Agriculture

DATE 9-21-95

Moved by Reynolds Seconded by Ward

AB 546 SB _____ Clearinghouse Rule _____

AJR _____ SJR _____ Appointment _____

A _____ SR _____ Other _____

A/S Amdt 24741

A/S Amdt _____ to A/S Amdt _____

A/S Sub Amdt _____

A/S Amdt 1 to A/S Sub Amdt 1

A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for:

- Passage
- Introduction
- Adoption
- Rejection

- Indefinite Postponement
- Tabling
- Concurrence
- Nonconcurrence
- Confirmation

| | Committee Member | Aye | No | Absent | Not Voting |
|--------|--------------------------|-----|----|--------|------------|
| 1. | Ott, Alvin (Chair) | ✓ | | | |
| 2. | Ward, David (Vice-Chair) | ✓ | | | |
| 3. | Ainsworth, John | ✓ | | | |
| 4. | Zukowski, Robert | ✓ | | | |
| 5. | Otte, Clifford | ✓ | | | |
| 6. | Skindrud, Richard | ✓ | | | |
| 7. | Hahn, Eugene | ✓ | | | |
| 8. | Olsen, Luther | ✓ | | | |
| 9. | Gronemus, Barbara | ✓ | | | |
| 10. | Baldus, Al | ✓ | | | |
| 11. | Reynolds, Martin | ✓ | | | |
| 12. | Springer, Thomas | ✓ | | | |
| 13. | Wilder, Michael | ✓ | | | |
| 14. | Dueholm, Robert | ✓ | | | |
| 15. | | | | | |
| 16. | | | | | |
| 17. | | | | | |
| 18. | | | | | |
| Totals | | 14 | 0 | 0 | 0 |

MOTION CARRIED

MOTION FAILED

Assembly Committee on Agriculture

Unanim. Consent

DATE 9-21-95

Moved by _____ Seconded by _____

AB 546 SB _____ Clearinghouse Rule _____

AJR _____ SJR _____ Appointment _____

A _____ SR _____ Other _____

A/S Amdt. 1234/1

A/S Amdt. _____ to A/S Amdt. _____

A/S Sub Amdt. _____

A/S Amdt. 1 to A/S Sub Amdt. 1

A/S Amdt. _____ to A/S Amdt. _____ to A/S Sub Amdt. _____

Be recommended for:

- | | |
|--|--|
| <input type="checkbox"/> Passage | <input type="checkbox"/> Indefinite Postponement |
| <input checked="" type="checkbox"/> Introduction | <input type="checkbox"/> Tabling |
| <input type="checkbox"/> Adoption | <input type="checkbox"/> Concurrence |
| <input type="checkbox"/> Rejection | <input type="checkbox"/> Nonconcurrence |
| | <input type="checkbox"/> Confirmation |

| | Committee Member | Aye | No | Absent | Not Voting |
|---------------|--------------------------|-----|----|--------|------------|
| 1. | Ott, Alvin (Chair) | ✓ | | | |
| 2. | Ward, David (Vice-Chair) | ✓ | | | |
| 3. | Ainsworth, John | ✓ | | | |
| 4. | Zukowski, Robert | ✓ | | | |
| 5. | Otte, Clifford | ✓ | | | |
| 6. | Skindrud, Richard | ✓ | | | |
| 7. | Hahn, Eugene | ✓ | | | |
| 8. | Olsen, Luther | ✓ | | | |
| 9. | Gronemus, Barbara | ✓ | | | |
| 10. | Baldus, Al | ✓ | | | |
| 11. | Reynolds, Martin | ✓ | | | |
| 12. | Springer, Thomas | ✓ | | | |
| 13. | Wilder, Michael | ✓ | | | |
| 14. | Dueholm, Robert | ✓ | | | |
| 15. | | | | | |
| 16. | | | | | |
| 17. | | | | | |
| 18. | | | | | |
| Totals | | 14 | 0 | 0 | 0 |

MOTION CARRIED

MOTION FAILED

Assembly Committee on Agriculture

DATE 9-14-95

Moved by Olsen Seconded by Reynolds

AB 546 SB _____ Clearinghouse Rule _____

AJR _____ SJR _____ Appointment _____

A _____ SR _____ Other _____

A/S Amdt _____

A/S Amdt _____ to A/S Amdt _____

A/S Sub Amdt _____

A/S Amdt _____ to A/S Sub Amdt _____

A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for:

Passage

Introduction 0229/1 sub

Adoption

Rejection

Indefinite Postponement

Tabling

Concurrence

Nonconcurrence

Confirmation

| | Committee Member | Aye | No | Absent | Not Voting |
|--------|--------------------------|-----|----|--------|------------|
| 1. | Ott, Alvin (Chair) | ✓ | | | |
| 2. | Ward, David (Vice-Chair) | ✓ | | | |
| 3. | Ainsworth, John | ✓ | | | |
| 4. | Zukowski, Robert | ✓ | | | |
| 5. | Otte, Clifford | ✓ | | | |
| 6. | Skindrud, Richard | ✓ | | | |
| 7. | Hahn, Eugene | ✓ | | | |
| 8. | Olsen, Luther | ✓ | | | |
| 9. | Gronemus, Barbara | | | ✓ | |
| 10. | Baldus, Al | ✓ | | | |
| 11. | Reynolds, Martin | ✓ | | | |
| 12. | Springer, Thomas | ✓ | | | |
| 13. | Wilder, Michael | ✓ | | | |
| 14. | Dueholm, Robert | ✓ | | | |
| 15. | | | | | |
| 16. | | | | | |
| 17. | | | | | |
| 18. | | | | | |
| Totals | | 13 | 0 | 1 | 0 |

MOTION CARRIED

MOTION FAILED



Wisconsin Agribusiness Council

2317 International Lane Suite 109 • Madison, WI 53704-3129 • (608) 249-2323 Fax (608) 249-2797

**Wisconsin Agribusiness Council Resolutions
as Adopted at the
WAC Annual Meeting, January 5, 1995**

Resolution 5.9 (Reaffirm 1993 - 1994 resolution.)

RIGHT-TO-FARM

WHEREAS, Wisconsin's Right-to-Farm statute is vague and ineffective in protecting farmers from nuisance suits and governmental actions affecting farming operations.

NOW, THEREFORE, Be It Resolved, that the Wisconsin Agribusiness Council supports a stronger statute to both protect our farmers and preserve Wisconsin's resources for the production of food and fiber.



State of Wisconsin
Tommy G. Thompson, Governor

Department of Agriculture, Trade and Consumer Protection

Alan T. Tracy, Secretary

801 West Badger Road • PO Box 8911
Madison, Wisconsin 53708-8911

Public Testimony of
Joseph Tregoning, Executive Assistant
Department of Agriculture, Trade and Consumer Protection

Committee on Agriculture
Assembly Bill 546
Room 417 North, State Capitol

Dear Representative Ott and Committee Members:

I am Joe Tregoning, Executive Assistant of the Department of Agriculture, Trade and Consumer Protection. I am testifying in support of AB 546.

As Wisconsin's population grows, there is increasing conflict between residential and agricultural uses of land, particularly in areas on the urban fringe. Expansion of residences to rural areas has resulted in homeowner complaints regarding the impact of agricultural practices on their quality of life. Dust, noise and odors are all normal consequences of modern agricultural practices, but may be considered nuisances by neighboring homeowners. As rural population densities increase, farm practices will face additional pressures and scrutiny, particularly regarding manure hauling and pesticide use.

As you know, section 823.08(1) of the Statutes currently treats nuisance actions differently depending on whether or not the actions occur on land that is subject to an exclusive agricultural zoning ordinance. Lands subject to such an ordinance are afforded greater protection than those that are not. The proposed bill would eliminate this distinction and extend the protections to all farm operations.

The Department supports AB 546 because it provides additional protection to farm operators who practice conventional modern agriculture. The proposed bill limits the cost of potential nuisance suits by limiting damages, restricting remedies, and limiting restrictions on agricultural practices due to alleged nuisances. It would also allow farmer-defendants to recover their litigations cost when they prevail and if the plaintiff is awarded only nominal damages.

If agriculture in Wisconsin is to remain profitable, it must be allowed to change and grow in response to new technological and economic conditions. Nonfarm residents must try to understand the realities of modern farming before moving to rural areas. If farm and nonfarm land uses cannot co-exist, farming in Wisconsin will decline and the conversion of farmland will likely follow.

We are pleased that Representative Klusman and other legislators have proposed this legislation and look forward to working with them to strengthen Wisconsin's right-to-farm law.

AB 546 - In favor -

TESTIMONY OF LAURA O. BEANE, W 7131 County J, Fort Atkinson, WI 53538

Good morning. My name is Laura Beane and I am the partner of one dairyman and the mother of another. I have been actively involved in our farming operation for most of the 50 years of our married life. We milk approximately 240 Holsteins, farm 526 owned acres and about 300 rented acres. In addition our son travels the United states (and indeed has been invited overseas) trouble shooting and consulting on Stray Voltage - particularly in dairy herds. Ours is a century farm, established in 1864, so ~~there~~^{it} is a long history ~~behind our operation~~. I am now, and have been, very concerned about the Wisconsin's farmer's right-to-farm. Some ¹² 15 years ago it was my privilege to serve on a Wisconsin Department of Agriculture, Trade, and Consumer Protection committee on the Right-to-Farm. At the time there was much agitation in the state, and in our area particularly, over chicken farms. The committee, chaired by Prof. John Skinner, retired UW-Madison Poultry Science Department, consisted of some 20 people, ranging from farmers like me, to experts in the field of waste disposal, odors, agricultural engineering, zoning, etc. We met for some 18 months and produced a report which, sad to say, went nowhere. We farm approximately 4 miles from the nearest municipality but we recently sold some acreage (not farmable) to urbanites where they have erected a home. We made ^apoint of telling them that they were moving into an agricultural area and thus would be subject to odors at times, to dust at others, and to possible noise from farm machinery during a busy crop season. We feel we have an obligation to our new neighbors as well as to those who have been neighbors for several decades, to plan our manure disposal, our early and late machinery use and to make their lives as unaffected as possible by our farming operation. We try hard to be good neighbors and expect the same of them. We assume they will treat our nearby acres as they would a neighbor's lot in the city - no treapassing to pick asparagus, or hickory nuts, or to ride mini bikes thru our hay fields, or to hunt on our land without permission.

Beane

- 3

wrong with the business odor in town. This despite the fact that the chicken farm employs several dozen people, brings a lot of cash into the area, and pays a very large sum in real estate taxes. Consumers, urbanites, and farmers must realize that change will take place in agriculture due to new ideas, new crops, new demands, or better prices for certain enterprises. Those of us in agriculture need some protection from these kinds of happenings.

We support this bill but have some questions. What is the definition of a nuisance? Of public health and safety? These definitions will either protect the farmer and his neighbors, or may provide a loophole for the uneducated to harass the farmer. There is enough stress in agriculture without individual farmers having to go thru what our friend Dick Popp of N.Y. state endured, or the chicken farms in my county.

Thank you for your time and I hope you will consider my viewpoint.
Should like to see bill stronger -
If there are any questions I will be happy to try to answer them.

RIGHT TO FARM PUBLIC HEARING

SEPTEMBER, 8, 1995

PETER KIRCHNER

N10251 KIRCHNER ROAD

CLINTONVILLE, WI 54929

My name is Pete Kirchner. I was born and raised in Wisconsin. I was active in 4-H, FFA, elected a State FFA Officer, and have been awarded The American Farmer Degree, an honor given to less than ~~2%~~ of the total FFA membership in America. I am a graduate of the Fox Valley Technical College Production Agriculture Program. For three years I worked for two Ag lending institutions: The First National Bank of Clintonville and The First State Bank of Sparta. I ~~went back~~ ^{began} farming fulltime and married a fine lady Mary, who also was born and raised on a Wisconsin farm. We farmed with my parents, a third generation dairy farm located on First Street at Clintonville Wisconsin. The farm is located next to the city limits: 44 acres is the home farm with the dairy set up. The balance of the acreage is located on various plots of 40 to about 75 acres each within one and one-half miles from the home 44 acres. Since we were located next to a city and a cemetery, we could only expand the farm to the west. This was done over a period of years. At one time there were ten dairy farms on this same length of road. Now, there two.

Residences began popping up into the neighborhood, and eventually a new auto repair shop was located on the street. It was then that trouble began. We had a farm with older buildings next to the auto shop. [My wife and I made an effort to obtain financing to upgrade these buildings upon our marriage, but this was denied.] Soon glass block windows in one of the buildings

were ~~shot out~~. A tire and rim was ~~stolen~~ from a farm implement in one of the sheds. We reported the incidents to the Waupaca County Sherriff's Department. ~~Nothing~~ was done by the department. On July 4, 1983, one of the barns at the site was burned down. ~~No~~ one from the Sherriff's Department made any contact with us. Two days later, a nearby shed was burned.

In October of 1984, when my wife was pregnant with our first child, I was ~~arrested for spilling manure on the roadway~~. I entered a plea of not guilty and the case was dismissed. In November, I purchased a new manure spreader.

In October 1987, I was cited for manure on the road ~~again~~. The case was dropped.

In 1988, when my wife was pregnant with our second child, I was ~~again~~ cited for manure on the road. When my case came up, Judge John Hoffman of Waupaca County ruled that I had adequate facilities for transporting manure and I was declared innocent of the charge.

In February of 1995, I was charged with violating the same law 346.94 subsection 7 and this time on May 16, I was found ~~guilty~~ by Judge Hoffman.

I shared some details of my case in a letter to Governor Thompson. He directed Alan Tracy, Wisconsin Secretary of Ag to Respond. Tracy also asked Mr. Charles Thompson, Secretary of Wisconsin Department of Transportation to give his views and information on the matter. My Town Chairman said, "I'll do what I can to get these people off your neck." Bill Jonely of the Waupaca County Law Enforcement committee said that he would see what he could do. Greg Blonde, the Waupaca County Ag Agent who testified for me said, "I ~~cannot~~

believe this is happening!"

Now it would be nice to believe that our Sherriff's Department, Attorneys, and Judges would just enforce the law and never be swayed by public opinion or political pressures but that simply is not the case.

Don Tagliapetria, owner of the body shop and car dealership needs our land next to him to expand. This land is my farm. He supported both Sheriff candidates so he would have someone to do his dirty work. At no time has the auto dealer talked to us about a problem. He simply calls the Sherriff's department and reports any tiny spillage of manure that occurs in an effort to get us to move. Sherriff Jim Waid says that even though the law talks about adequate facilities for transporting manure on the road, it is not his responsibility to define what those facilities are.

The law reads the operator of every vehicle transporting waste or foreign matter on the highways of this state shall provide adequate facilities to prevent such waste or foreign matter from spilling on or along the highways. Judge Hoffman's interpretation of the Law requires that this law needs to be changed. First there is the Law itself:

Alan Tracy read it and said, "The current law does accomodate travel by manure handling equipment provided that a manure spreader or tanker provide adequate facilities to prevent such waste or foreign matter from spilling on or along the highways.". It seems to me that what he is indicating here is that some tankers or spreaders are adequate for transporting manure or waste on or along a highway.

Page 4.....Peter Kirchner

Waupaca County Sherriff Jim Waid looked at the Law and said, "You must provide adequate facilities to prevent any waste or foreign matter from spilling on or along the highways period." Now everyone knows that transporting anything will eventually result in some tracking or spillage, but to say that you must eliminate all of that is to eliminate the activity. That is just what happened to me. The result is I am leaving a third generation dairy set up which the family owns. I am forced to move the dairy operation this fall to a leased set-up without living quarters for me and my family. The reason is the constant harrassment by the neighbors about any spillage of manure. Remember, they moved into the country. The farm has been there for generations. Allow me to prove my case by calculations.

In my court case the prosecution claimed there was spillage one inch wide running for one mile. That is 5280 feet or 63,360 square inches. They further claimed an area of 60 feet. That is 720 inches, by 4 feet, That is 48 inches. That gives you 34560 square inches. For a total of 97,920 square inches. All of this was $\frac{3}{8}$ ^{of an} inch thick which is .375 thousands of inches. 97920 square inches at .375 thousands inch gives you 36720 cubic inches. There are 231 cubic inches in one gallon. so, 36720 cubic inches divided by 231 gives you 159 gallons spilled on the road they claimed.

Fifty-two 1400lb Holstein cows producing 18000 thousands of milk will produce 6032 pounds of manure in one day. Now, we need to subtract 17% of that because the cows were outside 4 hours that day, so now we have 5007 lbs remaining to be loaded in the spreader that day. According to Lenard Mossie, a University of Wisconsin Ag

Page 5.....Peter Kirchner

Engineer, 30% of the manure cows like these produce is urine. Multiply 5007 lbs of manure by 30%. That equals 1502 pounds of urine contained in the load. 1502 lbs of urine divided by 8.5lbs per gallon totals 177 gallons. The bottom line is the prosecution claimed that 159 gallons were spilled. That leaves only 18 of the 177 gallons that would have been contained by the spreader which also had 5 bales of straw added to it.

These figures indicated that the prosecution lied and that the Judge was not willing or able to acknowledge it.

It is very important to note that I was prosecuted under the Littering statutes and not as a nuisance. Therefore, I am very concerned that this proposed legislation will still allow someone like me to slip through the cracks and not be helped. We must have clean roads to insure public safety but I believe some people are using this law to harrass farmers and our Wisconsin farmers deserve more consideration than that.

In cases involving manure on the road, I believe we must achieve a balance between public safety and what is possible for a farmer to comply with. We can achieve safety and at the same time maintain farm operations. Before a law suit or citation involving manure occurs, we ought to give a farmer the right to require the complainant to participate in a mediation process. Let's put some cost on the complainant with the farmer's cost being paid by a Farmers Assistance Mediation program. Current law cost the complainant nothing and may even pay him.

Page 6.....Peter Kirchner

Cases like mine must be somehow included in a Right to Farm Law as well as nuisance lawsuits. Because I am not a bad actor and I have not intentionally violated any state laws. Judge Hoffman would even back me up on that. He reaffirmed that I had made every attempt to have adequate facilities for transporting manure. The new law should recognize that a modest amount of inconvenience is necessary to carry on life in a community. We must weigh between the risk of harm and the utility of hauling manure. Each farmer ought to be privileged to make reasonable use of his resources even though there may be some infringement on the rights of others.

In cases like mine, I would ask that the Farmland Preservation Tax credits not be paid back because I have been pushed out of an Agricultural zone.

Thank You for your kind attention Mr. Chairman.



ALVIN R. OTT

State Representative
3rd Assembly District

To: Assembly Agriculture Committee Members

From: Representative Al Ott, Chair

Date: September 7, 1995

Please find attached:

1. A copy of AB 546, the "Right to Farm" bill, which we will be hearing testimony on tomorrow; and,
2. A copy of an amendment to AB 546 that was given to me by the author of the bill for consideration by the committee. Please hold onto the amendment for consideration during the executive session on AB 546 which is planned for September 14, 1995.



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Ranking Member: Agriculture, Forestry and Rural Affairs / **Member:** Environmental Resources; Labor and Job Training

 Printed on recycled paper



Date: September 14, 1995
To: Wisconsin Legislature Assembly Committee on Agriculture
Re: AB 546; Right to Farm Bill

Wisconsin's Environmental Decade recognizes the critical role of agriculture in our state's economy. However, we cannot support this bill in its current form because as written it effectively eliminates any incentive for farmers to be good neighbors.

We support farmland preservation as a means of balancing the pressures for development against the need to keep prime farm land in production and maintain open spaces. Right to Farm legislation is an integral part of a comprehensive, state-wide land use scheme. However, a "stand alone" bill, as this is, elevates agriculture above all other land uses, and invites abuses and irresponsible behavior.

Specific objectionable components include:

- the requirement that a threat to health and safety be both imminent and substantial. Under this standard threats to health and safety would continue if they are imminent but not substantial, and *vice versa*.
- the severe limitations on remedies. The bill robs courts of the power to order meaningful and timely remedies.
- the one-sidedness of cost recovery. Any prevailing party, plaintiff or defendant, should be able to recover costs, including attorney, expert witness and consultant fees.
- the threat to family farms. This bill openly invites huge corporate farming operations into our state, to the detriment of family farms, by essentially guaranteeing them immunity from the negative consequences of their actions on their neighbors and the communities in which they operate.

This bill contains useful ideas and components, including the requirement that a court seek advice on remedial practices from public agencies with appropriate expertise. However, on balance we believe it represents more of a threat than a benefit. We therefore oppose the bill in its current form.

Thank you for considering our position.

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Member of



Little Public Protection Provided Under This Exception

Proponents of disastrous state or federal legislation that would establish unlimited, taxpayer-funded entitlement programs to corporations and other large interests claim that citizens still are protected through a form of unwritten common law: public nuisance exceptions.

Legislators in state houses across the country point to these nuisance exceptions—which may be claimed by a party in a legal dispute when no existing laws apply—as a way to dismiss conservationists' claims that so-called "takings bills" pose a threat to homeowners, public health and safety, as well as to the environment.

Takings legislative proposals are designed to use taxpayer dollars to reimburse corporations and others whose ability to earn profits may be restricted in some way by basic legal protections of people and property. The net effect of such bills, however, is to destroy these basic legal protections by making them too expensive to enforce.

While nuisance exemptions purportedly protect the public's rights and interests against untoward land usage, proving a common law nuisance can be extremely difficult. According to legal experts, such as Georgetown University law professor Peter Byrne, "the nuisance exception is no exception at all!"

Glenn Sugameli, National Wildlife Federation (NWF) legal counsel, explains that the common law of nuisance offers "little, if any, meaningful protection for homeowners and the public." Not only is nuisance law very limited and highly unpredictable—varying as it does from state to state—but it is reactive, not preventive.

When or if it can be applied comes into play only after damage has been done, not before. Moreover, it cannot address property uses that cause widespread harm to many neighbors or the general public. In fact, the inadequacy of nuisance law to redress harm to the environment or to the public health and safety is often the basis for passing anti-pollution and other statutes.

THIS ISN'T A NUISANCE?

What on its face may seem a nuisance to the layman often proves not to be the case when viewed by the courts. One example of how nuisance law failed to protect the rights of property owners involved a Maine court ruling. Even though a defendant's filling of a wetland led to the flooding of his neighbors' home and property, nuisance law did not apply. The plaintiff had to prove that the defendant artificially stored and dis-

charged the water or established a water course, including a stream bed and banks, onto his neighbors' land.

In another case, the 4th Circuit Court of Appeals ruled that although a 300,000 gallon oil spill contaminated the ground under a Mantua, Virginia, neighborhood, residents could not recoup the loss of their properties' value under nuisance law because the contamination was, at that time, imperceptible to human senses. The court found that the contamination was not an "unusual interference with the use and enjoyment of property," even though the pollution deflated home values, preventing their sale.

In Massachusetts, the new owners of a property that once contained a gas station discovered that periodic leaks from underground storage tanks had contaminated the land with toxic chemicals. While it was clear that the contamination impaired the new owners' use and enjoyment of the land, a state court ruled that nuisance law applied only to the use of the neighboring land contemporaneous with the use of the gas station. Under nuisance law, landowners can do anything they want to their own property, including selling it and sticking a new owner with the costs of cleaning it up.

In another case, a landfill in Pennsylvania repeatedly discharged contaminated liquids into a navigable stream. The court rejected the plaintiffs' claim that these carcinogenic discharges constituted a nuisance. However, recognizing that testimony clearly established a potential danger posed by the landfill, the court ordered the earliest possible complete and permanent containment of the liquid, based on violations of the Clean Water Act and the Resources Conservation and Recovery Act.

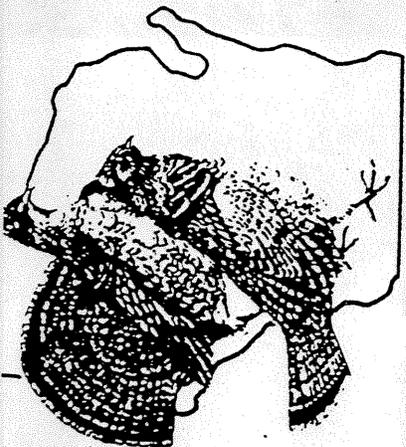
Takings bills would make enforcement of these and other laws prohibitively expensive. If takings legislation had been in effect, the owners of the landfill could have been forced to contain the pollution only if they had been paid to do so by the federal or state taxpayers.

Sugameli warned, "Conservationists should be alert to these nuisance exemptions. Nuisance law did not prevent the creation of thousands of hazardous Superfund sites which destroy the value of homes across the country, and it did not prevent the pollution that cumulatively caused the Cuyahoga River to burn. Nuisance exceptions are a ploy that totally fail to make these takings provisions any more 'reasonable,' and they should be rejected out of hand on that basis."

VOICE OF THE WISCONSIN OUTDOORS

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conservation



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ONE DOLLAR

WIS

The Department of Natural Resources appears in support of AB546 with one suggested amendment.

We believe the proposed legislation improves the situation for agricultural producers in the following ways, while continuing to recognize that existing agricultural operations need to be protected:

- expansion of agricultural operations consistent with existing agricultural uses are protected;
- an agricultural operation needs to have a significant effect on public health and safety before it can be restricted under the nuisance law;
- involving agencies with agricultural expertise in helping develop solutions;
- providing for a reasonable time schedule for the producer to resolve problems;
- suggesting that preferred solutions be operational rather than capital intensive.

The Department suggests the following amendment: page 3, line 23, delete "imminent and" and page 4, line 10, delete "imminent and".

The Department suggests this amendment because:

- many substantial threats to public and safety are chronic;
- the test for whether or not action needs to be taken is if there is a "threat". Using "substantial" as the trigger achieves this objective. "Substantial" is defined as "real; actual; true; not imaginary" in Webster's New World Dictionary, Second College Edition.
- the issue when nuisance action is filed is whether or not there is a problem, not timing.

i:\kurtz\ab546.tlk



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
Telephone (608) 266-1304
Fax (608) 266-3830

DATE: February 13, 1998

TO: REPRESENTATIVE SHERYL ALBERS

FROM: David J. Stute, Director

SUBJECT: Applicability of the Right to Farm Law to Local Government Action

File

This memorandum, prepared at your request, originates from the experience of one of your constituents. This constituent, who farms, is newly restricted by a local ordinance from spreading manure closer than 300 feet to the boundary of his agricultural property. In other words, he must maintain a 300-foot wide buffer along his line fences. You have inquired whether (and how) the so-called "right to farm law" could be modified to prevent the imposition of such governmental restrictions on agricultural practices.

DISCUSSION

Section 823.08, Stats., titled "Actions against agricultural uses," is the right to farm law. The law governs *private lawsuits* which are brought because the plaintiff alleges that an agricultural use or an agricultural practice constitutes a nuisance. In general, the statute sets out those conditions and circumstances under which an agricultural use or practice may *not* be found to be a nuisance. In those cases where an agricultural use or practice *is* found to be a nuisance, the law then regulates and restricts the relief which may be granted by a court. Last, the law provides for the awarding of litigation expenses to successful defendants in actions in which an agricultural use or practice alleged to be a nuisance is found not to be so.

Because the right to farm law applies only to lawsuits between private parties, it *does not* extend to exercise of the police power (i.e., legislating in the interest of public health, safety or welfare) by local units of government. If the Legislature wished to limit the power of local units of government to create ordinances such as the one you describe, it would be necessary to enact legislation restricting local government latitude in this area. Typically, such legislation would either preempt the ability of local governments to adopt such regulations; mandate the form and content of any regulations which may be adopted locally; or prohibit specific regulations.

Legislation to limit local government regulatory discretion is typically opposed by proponents of "local control," who contend that local units of government are best situated to regulate

(OVER)

and resolve conflicts between various parties at the local level. (That point of view is even evidenced in the right to farm law, which asserts in s. 823.08 (1), Stats., that local units of government, through the exercise of their zoning power, can best prevent conflicts between agricultural and other uses of land from arising in the future.) While legislation restricting the ability of local units of government to regulate agricultural practices may be controversial, there is no question that it can be done in a constitutionally acceptable manner. However, it may be somewhat late in the current legislative session to prepare legislation with any reasonable hope of success.

Please contact me at the Legislative Council Staff offices if you wish to further discuss this topic.

from Rep. Ward

ASSEMBLY BILL 546

"RIGHT TO FARM"

BACKGROUND

As suburbia continues to expand into the countryside, farmers continue to contend with neighbors whose idea of country living centers around having more green space, and not on the smells and noises which are part of everyday farming practices.

The intent of "right to farm" legislation is to help protect agricultural operations when legal actions are brought by neighbors opposed to specific farming practices. They are designed to give farmers who meet legal requirements a defense in nuisance suits. "Nuisance" is a legal term for an activity which causes unreasonable and substantial interference with another's quiet use and enjoyment of property.

Currently, all fifty states have some variation of right to farm laws. Wisconsin's right to farm law, passed in 1981, was intended to provide protection for farmers against nuisance suits. In spite of these good intentions, this law does not **prevent** nuisance suits against farmers, but instead **limits** the remedies if a nuisance is found against a farming operation.

Wisconsin's current right to farm statute, provides different levels of protection based on whether the operation is located inside or outside of an exclusive agricultural use district.

For operations located within exclusive agricultural use districts, courts may not substantially restrict agricultural uses and practices unless necessary to protect public health and safety.

For operations located outside of exclusive agricultural use districts, courts may require changes in the agricultural operation to reduce the offensive aspect of the use or practice. The law is silent regarding assessing damages, except that it specifies that damages may only be nominal for preexisting operations located outside of exclusive agricultural use districts.

Whether located inside or outside of an exclusive agricultural use district, if a farmer successfully defends a nuisance suit, Wisconsin law requires that the farmer be awarded reasonable costs and expenses in addition to attorney fees.

823.08 Actions against agricultural uses. (1) LEGISLATIVE PURPOSE. The legislature finds that changes in agricultural technology, practices and scale of operation have, on occasion, tended to create conflicts between agricultural and other activities. The legislature believes that, to the extent possible consistent with good public policy, the law should not hamper agricultural production or the use of modern technology. The legislature therefore deems it in the best interest of the state to establish guidelines for the resolution of those conflicts which reach the judicial system. The legislature further asserts its belief that local units of government, through the exercise of their zoning power, can best prevent such conflicts from arising in the future, and the legislature urges local units of government to use their zoning power accordingly.

(2) NUISANCE ACTIONS. In this section, "agricultural use" has the meaning specified in s. 91.01 (1) and "agricultural practice" means any activity associated with an agricultural use. In any action finding an agricultural use or an agricultural practice a nuisance, if the use or practice was conducted on lands not subject to an ordinance:

(a) Notwithstanding s. 823.03, closure shall not be available as a remedy unless the agricultural use or practice is a threat to public health and safety;

(b) The court may assess only nominal damages if the agricultural use or practice found to be a nuisance was conducted at the same location, on substantially the same scale and in substantially the same manner prior to the time that any plaintiff acquired an interest in any property damaged by the agricultural use or practice; and

(c) The court may order the defendant to adopt agricultural practices which have potential for reducing the offensive aspects of the activity or use found to be a nuisance. The court may request public agencies having expertise in agricultural matters to furnish the court with suggestions for practices suitable for reducing the offensive aspects of the nuisance.

(3) ACTIONS WHERE AN ORDINANCE. (a) In any nuisance action against an agricultural use or agricultural practice conducted on lands subject to an ordinance, the relief granted, if any, shall not substantially restrict or regulate such uses or practices, unless such relief is necessary to protect public health or safety.

(b) In this section, "ordinance" means an exclusive agricultural use zoning ordinance which has been certified under s. 91.06.

(4) COSTS AND FEES. In any nuisance action brought in which an agricultural use or an agricultural practice is alleged to be a nuisance, if the defendant prevails the defendant shall recover the aggregate amount of costs and expenses determined by the court to have been reasonably incurred on his or her behalf in connection with the defense of such action, together with a reasonable amount for attorney fees.

History: 1981 c. 123.

See note to 823.02, citing 1983 WLR 95.

823.085 Actions against owners or operators of solid waste facilities. (1) In this section, "solid waste facility" has the meaning given in s. 144.43 (5).

(2) In any action finding a solid waste facility or the operation of a solid waste facility to be a public or private nuisance, if the solid waste facility was licensed under s. 144.44 (4) (a) and was operated in substantial compliance with the license, the plan of operation for the solid waste facility approved by the department of natural resources and the rules promulgated under s. 144.435 (1) that apply to the facility, then all of the following apply:

(a) Notwithstanding s. 823.03, the court may not order closure of the solid waste facility or substantial restriction in the operation of the solid waste facility unless the court determines that the continued operation of the solid waste facility is a threat to public health and safety.

(b) The department of natural resources shall comply with a request by the court to provide suggestions for practices to reduce the offensive aspects of the nuisance.

(c) The amount recovered by any person for damage to real property may not exceed the value of the real property as of the date that the solid waste facility began operation increased by 8% per year.

(d) Punitive damages may not be awarded.

History: 1991 a. 269.

823.09 Bawdyhouses declared nuisances. Whoever shall erect, establish, continue, maintain, use, occupy or lease any building or part of building, erection or place to be used for the purpose of lewdness, assignation or prostitution, or permit the same to be used, in the state of Wisconsin, shall be guilty of a nuisance and the building, erection, or place, in or upon which such lewdness, assignation or prostitution is conducted, permitted, carried on, continued or exists, and the furniture, fixtures, musical instruments and contents used therewith for the same purpose are declared a nuisance, and shall be enjoined and abated.

History: Sup. Ct. Order, 67 W (2d) 585, 762 (1975); Stats. 1975 s. 823.09.

See note to 823.10, citing State v. Panno, 151 W (2d) 819, 447 NW (2d) 74 (Ct. App. 1989).

823.10 Disorderly house, action for abatement. If a nuisance, as defined in s. 823.09, exists the district attorney or any citizen of the county may maintain an action in the circuit court in the name of the state to abate the nuisance and to perpetually enjoin every person guilty thereof from continuing, maintaining or permitting the nuisance. All temporary injunctions issued in the actions begun by district attorneys shall be issued without requiring the undertaking specified in s. 813.06, and in actions instituted by citizens it shall be discretionary with the court or presiding judge to issue them without the undertaking. The conviction of any person, of the offense of lewdness, assignation or prostitution committed in the building or part of a building, erection or place shall be sufficient proof of the existence of a nuisance in the building or part of a building, erection or place, in an action for abatement commenced within 60 days after the conviction.

History: Sup. Ct. Order, 67 W (2d) 585, 762, 782 (1975); Stats. 1975 s. 823.10; 1977 c. 449.

Fourth degree sexual assault under 940.225 (3m) constitutes offense of lewdness and supports finding of nuisance. State v. Panno, 151 W (2d) 819, 447 NW (2d) 74 (Ct. App. 1989).

823.11 Evidence; dismissal of action; costs. In actions begun under s. 823.10 the existence of any nuisance defined by s. 823.09 shall constitute prima facie evidence that the owner of the premises affected has permitted the same to be used as a nuisance; and evidence of the general reputation of the place shall be admissible to prove the existence of such nuisance. If the complaint is filed by a citizen, it shall not be dismissed, except upon a sworn statement made by the complainant and the complainant's attorney, setting forth the reasons why the action should be dismissed, and the dismissal shall be approved by the district attorney of the county in writing or in open court. If the court is of the opinion that the action ought not to be dismissed it may direct the district attorney of the county to prosecute said action to judgment. If the action is brought by a citizen, and the court finds that there was no reasonable ground or cause for said action the costs shall be taxed to such citizen.

History: Sup. Ct. Order, 67 W (2d) 585, 762, 782 (1975); Stats. 1975 s. 823.11; 1993 a. 486.

823.113 Drug or criminal gang house a public nuisance. (1) Any building or structure that is used to facilitate the delivery or manufacture, as defined in s. 161.01 (6) and (13) respectively, of a controlled substance, as defined in s. 161.01 (4), and any building or structure where those acts take place, is a public nuisance and may be proceeded against under this section.

SUMMARY OF RIGHT TO FARM LEGISLATION - ASSEMBLY BILL 546

Authors: Representative Judy Klusman (R-Oshkosh)
Rep. David Ward (R-Fort Atkinson)
Senator Gary Drzewiecki (R-Pulaski)

Introduced by Representatives Klusman, Ward, Gronemus, Ott, Olsen, Zukowski, Ainsworth, Wilder, Hahn, Skindrud, Otte, Kreibich, Coleman, Jensen, Freese, Seratti, Brandemuehl, Silbaugh, Gunderson, Nass, Hutchison, Brancel, Powers, Ourada, Goetsch, Lehman, Musser, Huebsch, Albers, Grothman, Johnsrud, Foti, Porter, Gard and Harsdorf; cosponsored by Senators Drzewiecki, A. Lasee, Breske, Schultz, Weeden, Rude, Zien, Darling and Fitzgerald.

Assembly Bill 546 strengthens Wisconsin's existing nuisance statute pertaining to cases involving farmers and broadens the protection provided under the law. The proposed legislation contains the following provisions:

1. All agricultural activity, whether it is covered by exclusive agricultural zoning or not, is protected under the proposed legislation.
2. Expanded agricultural operations and operations that existed before the existence of the property use of the plaintiff are protected from excessive court damages. A court may only assess nominal damages if such an agricultural operation is found to be a nuisance.
3. Even in cases when an agricultural operation is found to be a nuisance, a court may not require mitigation of the nuisance if it substantially restricts or regulates the agricultural operation. This protection does not apply if the agricultural operation is an imminent and substantial threat to public health and safety. The proposed right to farm legislation is not intended to protect "bad actors" who intentionally violate environmental or other state laws.
4. In addition, when agricultural operations are found to be a nuisance, the courts must provide the farmer with reasonable time to correct the nuisance and must ask public agencies, such as Land and Water Conservation Departments or the UW-Extension, for suggestions as to how the farmer can best resolve the problem.
5. The courts cannot require a farmer to eliminate a nuisance if it will result in a substantial capital expenditure or if it will substantially and adversely affect the economic existence of the agricultural operation, unless the agricultural activity is an imminent and substantial threat to public health and safety.
6. In cases in which an agricultural operation is not found to be a nuisance or when only nominal damages are claimed against the farmer, the plaintiff must pay the litigation expenses of the farmer. (Please see amendment to the bill which modifies this provision)

RIGHT TO FARM CO-SPONSORS

REPRESENTATIVES

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ALBERTA DARLING

SCOTT FITZGERALD

Proposed law protects farmers

Bill limits lawsuits from neighbors bothered by farm practices

By Jennifer A. Galloway
Agriculture reporter

TOWN OF POLK — Farmers who feud with their suburban neighbors over the smell of manure or the noise of machinery could get protection from the courts under proposed legislation unveiled at Farm Progress Days.

The bill, called "Right to Farm" legislation by its sponsors, would limit nuisance lawsuits against farmers whose practices disturb nearby landowners.

Farmers are getting more and more new neighbors and have felt the pressures of urban sprawl for far too long, said Judith Klusman, R-Oshkosh, one of the bill's sponsors.

Klusman said the legislation would protect the state's farmers by shielding them from "frivolous" and costly litigation that can put them out of business.

Both Klusman and co-sponsor David Ward, R-Fort Atkinson, denied they were trying to protect farmers who intentionally violate environmental laws.

■ Farm Progress Days continues from 8:30 a.m. to 4:30 p.m. today. The cost is \$2 per person; children under 12 free. The event is on the Neuberg dairy farm in Washington County, near Highway E, about 2 miles south of Slinger and 60 miles east of Madison. It is north of Interstate 94 and east of Highway 83.

"We want to encourage those who have been doing a good job," Ward said.

The bill would strengthen the state's nuisance statute, which sets guidelines for legal resolution of conflicts between farmers and neighbors. It would:

■ Cover farmers regardless of their size, location or type of business.

■ Provide disincentives for pursuing trivial lawsuits by requiring plaintiffs to pay a farmers' legal fees even when farmers must pay damages.

■ Give farmers adequate time and advice to resolve their problems when they lose "nuisance" cases.

Dane County Sup. Thomas Clauder, 33rd District, Fitchburg, said that in general he supports efforts to protect the rights of farmers whose livelihood requires activities that may be unpleasant to others.

"Most Dane County farmers have been here long before new houses and subdivisions were built in the community," Clauder said Wednesday in Fitchburg. "As citizens, you have to respect that."

He said most longtime residents of Fitchburg who live next to farms accept the realities of farming.

New residents in suburbs cropping up back-to-back with generations-old farms tend to complain more.

That kind of clash is bound to multiply as cities and towns grow, Ward said at Farm Progress Days.

What's more, the trend toward larger farms and different practices will also antagonize urban and rural communities.

Farm

Continued from Page 5B

"Keeping farmers farming is the best way to preserve farmland," said Dan Paulson, president of the Farm Bureau of Wisconsin said during a press conference to push legislation to protect farmers from "nuisance" lawsuits or claims.

Water woes: A booth offering free tests of water for nitrate contamination was one of the busier spots at the show, as well owners lined up with samples for testing by UW-Extension.

"At this rate, we'll test more water today than we did in three days last year," said Chris Mechenic, who was assisting with the tests. Last year, the extension service tested about 150 samples.

Nitrates have been recognized as the No. 1 contaminant in the state's groundwater, with estimates that 30 percent or more of private wells showing some contamination. Nitrates seep into the groundwater both from animal waste and chemical fertilizer and from failing septic systems.

Any more than 2 parts per million in groundwater shows evidence of human impact. Over 10 ppm exceeds federal drinking water standards, with children, pregnant women, the elderly and ill advised not to drink such water.

Nitrogen replaces oxygen in the blood system and can circulatory problems. Studies have also linked nitrates in water to birth defects.

About half of the samples

tested Tuesday show some nitrates but most were far below the 10 ppm warning.

But a few did come in over the enforcement standard, such as the water brought in by Robert Thom of rural Germantown, which tested at 10 ppm for nitrates.

"I'd never had it tested. Now I'm a little worried about it," said Thom, 65, who is concerned because his granddaughter is expecting a child and is living with him. Thom, whose well is near an old farmhouse, said the area is also seeing more private septic systems.

Other families had better news.

Gary Zastrow of Mayville and his son had come in for water testing. It showed no nitrates at all.

"I figured it was OK but since the test was free I brought it in," he said.

Not everyone was as concerned about contaminated water.

JoAnn Vogel, whose family runs a huge farming operation in Manitowoc County, said the concern over nitrates in water was a "bunch of hokey."

"The guy who wants a green lawn is probably dumping more fertilizers down that we do," said Vogel, who has been active in women and farming issues for two decades, and says farmers still get a bad rap for polluting water.

But Ron Hennings, a groundwater expert with the state geological survey assisting with the tests, said that people who live in rural areas or drink from private wells near septic systems are kidding themselves if they don't think there is a problem.

"The question shouldn't be

whether we test but rather what policy changes to you make based on those test results," he said.

Efforts to address groundwater contamination in the state have stalled amid the recent atmosphere of less government regulation.

Cows vs. condos: If you can't take the manure, stay out of the meadow.

That's the underlying message of a "Right to Farm" bill, unveiled at Farm Progress Days.

As Wisconsin's cities have crept out next to farm fields, conflicts have arisen with new suburban homeowners who don't like the smell or the noise or the slow-moving traffic that comes from living next to a farm operation.

Suburban residents in formerly all-rural townships have been filing lawsuits or pushing ordinance changes at the local level that would restrict farming practices such as hay-cutting at night or pesticide spraying.

The right to farm measure, sponsored by Rep. Judy Klusman, R-Oshkosh, and Rep. Dave Ward, R-Fort Atkinson, would offer farmers some protections at the state level.

Klusman recounted a recent case in Door County where a dairy farmer was forced to spend money fighting a lawsuit brought by suburban neighbors who didn't like the smell of freshly spread manure.

"This legislation will help protect Wisconsin's agricultural traditions and the family farm from trivial lawsuits," said Klusman.

Ward said the measure is not meant to protect "bad actors" who violate environmental laws and regulations.

"In many of these cases the lawyers are just going after the guy with the deepest pockets, seeing what they can get," he said.

Ward said farmers are also facing more challenges as town boards are being filled with suburban residents instead of the farmers who traditionally dominated the towns' decision-making.

Klusman said the bill is an attempt to cut down on the cows-vs-condos conflicts that often arise when land is developed for residential use near agricultural areas.

Stone age fare: Now about that bad food.

You'd figure a huge farm show would be a great opportunity to showcase Wisconsin summer bounty.

But for a show titled "Farm Progress" the menu seemed out of touch with the 1990s.

There was nary a fruit, a vegetable or anything even marginally healthy or exotic on site. Only pork sandwiches and hot dogs served on soggy buns at open wooden counters erected so everyone had to eat standing in a row like milking Holsteins.

Where were the fresh tomatoes, hothouse or otherwise? Or some early sweet corn? Maybe even some iced ginseng tea, with the magical root now a hot state export crop.

Senate bill attacks public's health, safety standards

Dear Editor: The people of Wisconsin sent Herb Kohl to Washington to protect the interests of their state.

This week, however, he may be tempted to vote to weaken health and safety standards which protect Wisconsinites from tragic death and needless injury from tainted meat, contaminated water, polluted air, dangerous consumer products, and unsafe workplaces.

The Senate is considering SB 343. It is designed to ease the alleged burden that federal environmental, health and safety standards pose for business. Unfortunately, the cure is far worse than the disease.

Had this bill been law two dec-

ades ago, lifesaving advances that we now take for granted, such as the abolition of leaded gasoline, or the installation of seat belts and airbags in cars, would likely not have taken place.

SB 343 mandates an unworkable cost/benefit test for every new health and safety standard.

Agencies like the Environmental Protection Agency and the National Highway Traffic Safety Administration already use cost/benefit analysis to evaluate proposed standards, but SB 343 carries it to an extreme, making cost/benefit a make-or-break criterion for deciding whether to issue a safety standard.

If one ignores the human reality

of preventable injury, illness or death, it may sound reasonable to say that the benefits of a rule should outweigh its costs.

But cost/benefit analysis is an emerging discipline, and a crude analytical tool. Benefits are much harder to document and quantify than costs. Moreover, cost estimates generally come from industry, which consistently overstates the burden of federal safeguards.

Who is to say what is the dollar value of a human life? Is it \$200,000? \$1 million? \$5 million? The decision is obviously arbitrary, but can totally skew the outcome of a cost/benefit analysis.

Liz Barrett
Public Citizen
Washington, D.C.

AB546 - Klusman; Ward

Springer

Change to Public Health + Safety

- threats based on science + not emotions

bill protects farmland that gets annexed into a city + possibly into a non-ag zone

#

Nothing in bill that will encourage farmers to disregard other environmental law

no Beane def - public health + safety

nuisance

Girchner

- charged under littering law for manure spillage on road

DNL amendment - Kuntz

p 3 line 23 - delete imminent and (3)

p 4 line 10 " " " " and

Klussendorf

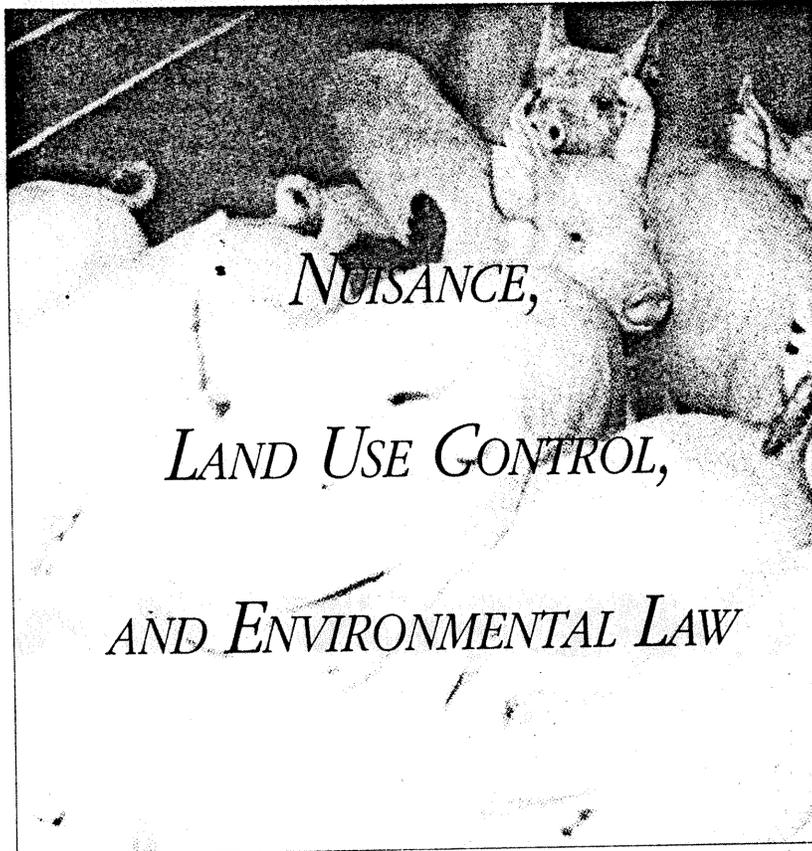
make bill broader - override local ordinances (can only run tractor team - 6pm)

↳ mostly township

from
Klusman/
Ward

Published by the Drake University Agricultural Law Center

A LIVESTOCK PRODUCER'S LEGAL GUIDE TO:



BY PROFESSOR NEIL D. HAMILTON



Written under a grant from the American Farm Bureau Federation

APPENDIX

Fifty State Review of Agricultural Nuisance Law and Resource Directory

The following discussion reviews agricultural nuisance cases and the right to farm laws of each state. If a state law has already been discussed in the book those pages are referenced. Following each discussion is a list of resources to contact for information about state laws on livestock production or for assistance in responding to a legal threat. A list of other valuable addresses is set out at the end.

ALABAMA Ala. Code §6-5-127 (1990).

In a 1974 case, Baldwin v. McClendon, 288 So.2d 761 (Ala. 1974), discussed at p. 12, a hog confinement operator was required to pay damages to a neighboring farmer for a nuisance claim. In Gregath v. Bates, 359 So.2d 404 (Ala. 1978), the Alabama Court of Appeals affirmed an injunction against a hog confinement operation. The trial court had determined odors from the operation were a "continuing and repeated nuisance" which had to be stopped.

Alabama enacted a right to farm law in 1979. Under this law agricultural, manufacturing and industrial plants, and farming operation facilities are not to become nuisances because of any changes in the locality around the operation, if they meet two conditions: a) they have been in operation for one year, and b) were not a nuisance when they began operation. Farm operations which become a nuisance due to a lack of proper care are not protected by the law. Local regulations which make an operation a nuisance are deemed null and void if Alabama's right to farm law protects the operation. There is some uncertainty as to the reach of Alabama's law, because no definition is provided



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for "agricultural operation facility." The right to farm law does not protect an operation which pollutes a stream or causes an overflow onto another person's property.

Two recent cases involving nuisance claims against agricultural operations illustrate how the courts may apply the right to farm law. Sweedenburg v. Phillips, 562 So.2d 170 (Ala.1990), held the right to farm law did not apply because the neighbors were there first, and is discussed at p. 55. In Christiansen v. Hall, 567 So.2d 1338, (Ala.1990), the Supreme Court of Alabama agreed that odors coming from the poultry houses of John Hall did not create a nuisance. Because the trial court did not allow Christiansen to maintain his nuisance claim, it did not have to consider the right to farm law. Another Alabama case, Born v. Exxon Corp., 388 So. 2d 933 (Ala. 1980) involved an industrial plant, but the case is important because the court interpreted the law as a one year statute of limitations.

Resources

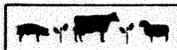
- Alabama Farm Bureau Federation, P.O. Box 8038, Dothan, AL 36304-8038 (205)983-5319
- Alabama Poultry and Egg Ass'n, P.O. Box 1010, Cullman, AL 35056-1010 (205)734-3353
- Alabama Cattlemen's Ass'n, P.O. Box 2499, Montgomery, AL 36102-2499 (205)265-1887
- Alabama Dairy Council, Montgomery, (205)262-6036
- Alabama Pork Producers Assn., P.O. Box 11000, Montgomery, AL 36191-0001 (205)288-3900
- Alabama Dept. of Environmental Management, 1751 Federal Drive, Montgomery, AL 36130 (205)271-7700

ALASKA Alaska Stat. §09.45.235 (1990)

In 1986 Alaska became the 49th state to enact a right to farm law. The Alaska statute defines an agricultural operation to include the cultivation, conserving, and tillage of the soil; dairying; the operation of greenhouses; the production, cultivation, growing, and harvesting of an agricultural, floricultural, or horticultural commodity; the raising of livestock, bees, fur-bearing animals, or poultry; forestry or timber harvesting operations; and any practice conducted on the agricultural operation as an incident to or in conjunction with these activities. Under the law an agricultural operation is not and does not become a private nuisance due to changed conditions on the neighboring land. The agricultural operation must have existed for three years and not been a nuisance when it began. Protection is not available if the nuisance is due to negligent conduct of the agricultural operation or to flooding. Municipal ordinances, resolutions, or regulations to the contrary are superseded by the statute. The law has not been tested in any reported cases.

Resources

- Alaska Farmers and Stockgrowers Ass'n, Inc., P.O. Box 2410, Palmer, AK 99645 (907)745-6017



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— Alaska Dept. of Environmental Conservation, P.O. Box 0, 3320 Hospital Dr., Juneau, AK (907)465-2600

ARIZONA Ariz. Rev. Stat. Ann. §§3-111, 3-112 (1990)

In 1972 the Arizona Supreme Court rendered a famous decision in Spur Industries Inc. v. Del E. Webb Development Co., 494 P.2d 700 (Ariz. 1972) concerning the "coming to the nuisance defense," discussed at p. 18. The Court held a large cattle feeding facility was both a private and public nuisance because odors affected an adjacent senior citizens community, but the Court required the developer to pay the costs of moving the feedlot or closing it down.

In 1981 Arizona enacted a right to farm statute using the GAAMP approach. Under this law an agricultural operation conducted using good agricultural practices and in conformity with applicable federal, state, and local environmental laws and regulations is presumed reasonable and does not constitute a nuisance. In order to claim the protection, an operation must have been established prior to surrounding non-agricultural uses. By complying with applicable laws an agricultural operation is presumed to be reasonable and is presumed to not be adversely affecting public health and safety. However, if the operation has a substantial adverse effect on the public health and safety, the operation may not be protected under the law. The Arizona law has not been interpreted in any reported cases.

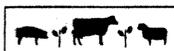
Resources

- Arizona Farm Bureau Fed., 3401 East Elwood St., Phoenix, AZ 85040 (602)470-0088
- Arizona Cattlemen's Ass'n, 1401 N. 24th St, Suite #1, Phoenix, AZ 85008-4618 (602)267-1129
- Arizona Dairy Council, Tempe, (602)968-7814
- Arizona Pork Council, 629 E. Manor Drive, Casa Grande, AZ 85222 (602)836-0050
- Arizona Dept. of Environmental Quality, 2005 North Central Ave., Phoenix, AZ 85004 (602)257-2300

ARKANSAS Ark. Code Ann. §§2-4-101 to 107 (Michie 1987)

The disposal of dead chickens was the problem in two Arkansas cases. In Ozark Poultry Products Inc. v. Garman, 472 S.W.2d 714 (Ark. 1971), odors from a rendering plant were considered to be bad enough to interfere with the plaintiffs' enjoyment of their homes. Ozark Poultry Products, contended the nuisance experienced by the plaintiffs was the same the general public experienced and so was enjoined only through an action for public nuisance. The Supreme Court of Arkansas agreed it was a public nuisance but ruled that did not mean it could not also be a private nuisance subject to injunction. In Ozark Bi-Products Inc. v. Bonannon, 271 S.W.2d 354 (1954), the Arkansas Supreme Court held a lower court's permanent injunction against a rendering plant due to odor problems was proper.

Arkansas enacted a right to farm law in 1981 providing agricultural facilities with



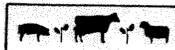
protection from public or private nuisance suits if they have been in operation for more than one year and were not a nuisance when begun. An agricultural facility includes "but is not limited to any plant, facility, structure, or establishment used for the feeding, growing, production, holding, processing, storage or distribution for commercial purposes of crops, livestock, poultry, swine, or fish, or products derived from any of them." The protection does not apply to a facility that "materially changes its character of operation or materially increases the size of its physical plant." Suits for damages due to the pollution of waters of any stream or on account of overflow of lands are not covered by the statute. County and municipal ordinances which make an agricultural facility a nuisance are "void and shall have no force or effect."

The statute has not been interpreted in any reported cases, but there have been recent nuisance cases involving agriculture. The Low Gap Hog farm was the target of a nuisance suit in *Higbee v. Starr*, 598 F.Supp. 323 (E.D. Ark. 1984), when Billy Joe Higbee claimed the farm was violating the Clean Water Act and was a nuisance. The federal district court found the farm to be a "clean and efficient operation." The court ruled any pollution at Higbee's residence "was caused by the unsanitary practices of Higbee and her family, both in regard to their placement, rotation, and disposal of outhouses and human wastes, and in regard to the husbandry of her animals, which were allowed to roam freely, drink, swim and bath in, and foul all of her water sources." In answer to interrogatories Higbee had stated that during a three year period she kept on her ten acres approximately 75 dogs, 40 cats, 2 horses, 30 goats, 8 pigs, 400 chickens, 4 peacocks, 130 turkeys, 1 cow, 30 pigeons, 60 rabbits, 35 ducks, and 30 geese. The record revealed, "She prided herself on the fact that she did not keep her animals in pens, but allowed them to have free run of her yard and of her house." The case is interesting because it did not come cheap for the parties due to the amount of expert testimony involved in the suit.

In *McRae v. Bishop*, No. CA 90-515, 1991 Ark. App. LEXIS 341 (Ark Ct. App. 1991), the Court of Appeals refused to overturn a lower court ruling a hog farm did not constitute a nuisance. The chancellor visited the site and a "Barnaby Cheeny Sentometer" was used to measure the odors. The right to farm law was not discussed, apparently because Bishop's had materially changed the character of their operation by contracting with Tyson Foods to raise hogs and had materially increased the size of their operation by constructing four hog houses with a capacity of 2,500 hogs.

Resources

- Arkansas Farm Bureau Fed., P.O. Box 31, Little Rock, AR 72203-0031 (501)224-4400
- Arkansas Poultry Fed., P.O. Box 1446, Little Rock, AR 72203 (501)375-8131
- Arkansas Cattlemen's Ass'n, 11701 Interstate 30 #412, Little Rock, Ar 72209 (501)455-1430
- Arkansas Associated Milk Producers, Little Rock (501)224-9200
- Arkansas Pork Producers Ass'n, Rt. 1, Box 190, Dover, AR 72837 (501)331-4364
- Arkansas Dept. of Pollution Control and Ecology, 8001 National Drive, Little Rock, AR 72209 (501)562-7444



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CALIFORNIA Cal. Civ. Code §3482.5 (West 1991).

In 1981 California enacted a right to farm law protecting agricultural facilities from public and private nuisance actions if certain conditions are met. The "agricultural activity," which includes the raising of livestock and poultry, must be conducted for commercial reasons and in a manner consistent with proper and accepted customs and standards, as established and followed by similar agricultural operations in the same locality. If it has been in operation for more than three years and wasn't a nuisance when began, the statute provides it won't become a nuisance due to any changed condition in or about the locality, such as nearby residential development. The statute does not apply if the activity obstructs free passage or use of navigable water or roadways. The law provides it prevails over any contrary provision of any ordinance of a political subdivision, such as a city or county.

The new California statute has not been applied in any reported cases. An earlier California case involving a nuisance action against a livestock facility, Wade v. Campbell, 200 Cal. App. 2d 54, 19 Cal. Rptr. 173 (Calif. Ct. App. 1962), held odors from a large dairy operation were an enjoined nuisance. In recent years, 29 California counties and some towns have enacted a local right to farm ordinance, discussed at p. 28.

Resources

- California Farm Bureau Fed., 1601 Exposition Blvd., Sacramento, CA 95815 (916)924-4075
- California Poultry Ind. Fed., 3117-A McHenry Ave., Modesto, CA 95350 (209)576-6355
- California Cattlemen's Ass'n, 1221 H Street, Sacramento, CA 95814-1910 (916)444-0845
- Dairy Council of California, Sacramento (916)920-7691
- California Pork Producers Ass'n, P.O. Box 1800, Atascadero, CA 93423 (805)461-5347
- California State Water Resources Control Board, 901 P Street, Sacramento, CA 95814 (916)322-3132

COLORADO Colo. Rev. Stat. §35-3.5-101 to 103 (1984).

In 1972 the Supreme Court of Colorado in Hobbs v. Smith, 493 P.2d 1352 (Colo. 1972), upheld a lower court ruling enjoining Arlene Hobbs from keeping two horses in her backyard even though it was permitted by zoning, and the property was well maintained. The Court found that even though an activity is permitted by law and not negligent, it can constitute a private nuisance and be enjoined. In 1977 the Colorado Court of Appeals reviewed a lower court decision in Miller v. Carnation Company, 564 P.2d 127 (Colo. App. 1977) involving a suit between a home owner and Brighten Egg Company, a wholly owned subsidiary of Carnation. The Millers experienced substantial problems with their new home from flies, rodents, and odors coming from the manure in the chicken houses. The Millers claimed they were deprived of the use and enjoyment of their property. At the time of trial Carnation was in the process of removing the offending chicken houses so the trial court denied an injunction, but awarded Millers \$85,748 in compensatory damages and \$300,000 in



exemplary damages. Carnation appealed arguing the awards were duplicative and excessive, but the appeals court upheld them.

In 1981 Colorado enacted a right to farm statute which provides an agricultural operation, including livestock production, shall not be or become a public or private nuisance due to changed conditions in the locality if it was in operation for more than one year and was not a nuisance when began. The operation may not claim protection if operated negligently or if it increases substantially in size. Local ordinances or regulations in conflict with the protections are void. However, if the agricultural operation is located within the corporate limits of a city or town on July 1, 1981, or voluntarily annexed to a municipality on or after July 1, 1981, local ordinances or regulations do apply.

Weld County Colorado was the site of a controversy involving National Hog Farms' construction of a 300,000 head swine facility, discussed at p. 82. There have been no reported cases interpreting Colorado's Right to Farm Law.

Resources

- Colorado Farm Bureau, P.O. Box 5647, Denver, CO 80217 (303)455-4553
- Colorado Cattlemen's Ass'n, Livestock Exchange Building #220, Denver, CO 80216 (303)296-1112
- Western Dairy Council, Thorton, (303)451-7711
- Colorado Pork Producers Council, P.O. Box 1445, Greeley, CO 80632-1445 (303)454-3107
- Colorado Dept. of Health, 4210 East 11th Ave., Denver, CO 80220 (303)331-4510

CONNECTICUT Conn. Gen. Stat. Ann. §19a-341 (West 1986)

In Maykut v. Plasko, 365 A.2d 1114 (Conn. 1976), the Connecticut Supreme Court upheld the lower court's issuance of a permanent injunction of the use of a corn cannon or noise making device to scare birds even though local zoning and state law specifically permitted such use. The court ruled use of the cannon was a nuisance subject to injunction. In 1981 Connecticut enacted a right to farm law that provides protection from public or private nuisance suits for farming operations that have been in operation for more than one year, have not substantially changed, and follow generally accepted agricultural practices [GAAP's]. Inspection and approval by the commissioner of agriculture is *prima facie* evidence the operation follows GAAP's. Protection is granted from suits arising from nuisance caused by a list of specific activities, listed on p. 26. Under the law, general statutes or municipal ordinances to the contrary are not applicable, however, the protections do not apply when a nuisance results from "negligence or willful or reckless misconduct in the operation of the farm." There have been no reported interpretations of the law.

Resources

- Connecticut Farm Bureau Ass'n, Inc., 101 Reserve Road, Hartford, CT 06114 (203)249-6208
- Connecticut Poultry Ass'n, 197 Maple St., Norwich, CT 0630 (202)886-2421



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- Connecticut Pork Producers Ass'n, 81 Young St., East Hampton, CT 06424 (203)267-1108
- Connecticut Dept. of Environmental Protection, State Office Building, 165 Capitol Ave., Hartford, CT 06106 (203)566-5599

DELAWARE Del. Code Ann. tit. 3 §1401 (1985)

In 1944 the Delaware Court of Chancery enjoined the manure handling practices of Domenico Roggero because they created a nuisance to David Cain and other residents of a nearby housing development. In Cain v. Roggero, 38 A.2d 735 (Del. Ch. 1944), the offending practice was piling and turning horse manure used in the growing of mushrooms. The piles produced bad odors and a breeding ground for flies. Even though Roggero had been growing mushrooms and using the same manure practices long before the plaintiffs moved to the new residential area, the court sided with the new residents and required Roggero to change his practices. The Court cited United States v. Luce, C.C., 141 F. 385 (D. Del. 1905), for the statement "the mere fact that one voluntarily 'comes to the nuisance' will not preclude him from complaining of and obtaining relief against it."

In 1980 Delaware passed a law that no agricultural or forestal operation can be considered a nuisance as a result of changed conditions in the community. The statute covers both public and private nuisances and requires the operation have been in existence for at least one year to be protected. If the nuisance is determined to exist because of negligent or improper operation or if the operation is in violation of state or federal law or local or county ordinance, it is not protected under the law. In 1991 Delaware enacted an Agricultural Land Preservation Law, which includes right to farm protections for farms located in agricultural districts. The law includes a requirement developers provide buyers notice of nearby districts, and provides for fee shifting. Delaware Code, Tit. 3, §§901, 910 (1991). There have been no cases interpreting the Delaware right to farm law.

Resources

- Delaware Farm Bureau, 233 S. DuPont Highway, Camden DE 19934 (302)697-3183
- Delmarva Poultry Industry, Inc., Route 2, Box 47, Georgetown, DE 19947-9622 (302)856-9037
- Delaware Pork Producers Ass'n, Route #3, Box 590, Milford, DE 19963 (302)335-4221
- Delaware Dept. of Natural Resources and Environmental Control, 89 King's Highway, P.O. Box 1401, Dover, DE 19903 (302)736-4403

FLORIDA Fla. Stat. Ann. §823.14 (West 1991).

Florida courts have often faced questions of nuisance and agriculture. Cases include: Bunyak v. Clyde J. Yancey & Sons Dairy, Inc., 438 So. 2d 891 (Fla. D. Ct. App. 1983), finding a dairy farm to be a nuisance due to overflow of liquid manure onto an adjacent cattle farm; Buchanan v. Golden Hills Turf and Country Club Inc., 257 So. 2d 54 (Fla. D. Ct. App. 1972), finding a cattle feedlot was a nuisance due to odors but holding an injunction was too broad and had to be



modified; and Mercer v. Brown, 190 So. 2d 610 (Fla. D. Ct. App. 1966), finding a hog farm, feeding garbage, was a nuisance and limiting the number of hogs to 1,000 and restricting the time and method of storing food.

In 1979 Florida enacted a right to farm statute, later amended in 1982 and in 1987, to protect agricultural operations, discussed at p. 25. The statute makes it the policy of the state to encourage agriculture and to "protect reasonable agricultural activities conducted on farm land from nuisance suits." A farm that has been in operation for one year or more, and that was not a nuisance when established is not a public or private nuisance if the farm operation conforms to generally accepted agricultural and management practices. However, the statute sets out a number of specific activities, such as storing untreated offal, that are not protected. The law also provides that a farm operation won't become a nuisance as a result of changes in conditions in and around the locality of the farm. The statute restricts agricultural operations that were adjacent to an established homestead or business as of March 15, 1982, from changing to a "more excessive farm operation with regard to noise, odor, dust or fumes." A 1987 amendment added "aquaculture" to the definition of "farm." The Florida law was the subject of a recent court opinion, Pasco Co. v. Tampa Farm Services, Inc., discussed at p. 51.

Resources

- Florida Farm Bureau Fed., 5700 S.W. 34th St., Gainesville, FL 32614-7030 (904)378-8100
- Florida Poultry Fed., Inc., 4508 Oak Fair Boulevard #109, Tampa, FL 33610 (813)620-4008
- Florida Cattlemen's Ass'n, P.O. Box 421929, Kissimmee, FL 34742-1397 (407)646-6221
- Florida Dairy Council, Orlando (407)628-1266
- Florida Pork Improvement Group, P.O. Box 147030, Gainesville, FL 32614-7030 (904)374-1542
- Florida Dept. of Environmental Regulation, 2600 Blair Stone Road, Tallahassee, FL 32399 (904)488-4805

GEORGIA Ga. Code Ann. §72-108 (Michie 1989).

In 1980, Georgia enacted a right to farm statute which provides:

No agricultural or farming operation, place, establishment, or facility, or any of its appurtenances, or the operation thereof, shall be or shall become a nuisance, either public or private, as a result of changed conditions in or around the locality of such agricultural or farming operation, place, establishment, or facility if such agricultural or farming operation, place, establishment, or facility has been in operation for one year or more.

The Georgia law was the first to be considered by a court in an agricultural nuisance dispute. In Herrin v. Opatut, 281 S.E.2d 575 (Ga. 1981), the Georgia Supreme Court held a large poultry operation was not protected because the nuisance did not arise due to changes in the surrounding area, but instead resulted from changes in the farm. The case is discussed at p. 53. In 1989 the



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Georgia law was amended to add very specific definitions of "agricultural facility" and "agricultural operation." These definitions are set out on p. 29. The new amendments also protect expansion of the farm or changes in the technology used, see p. 31.

Resources

- Georgia Farm Bureau Fed., 1620 Bass Road at I-75, Macon, GA 31210 (912)474-8411
- Georgia Poultry Fed., P.O. Box 763, Gainesville, GA 30503 (404)532-0473
- Georgia Cattlemen's Ass'n, P.O. Box 11307, Macon, GA 31212-1307 (912)474-6560
- Dairy Council of the Southeast, Atlanta (404)996-6085
- Georgia Pork Producers Ass'n, Box 7985, Macon, GA 31209 (912)477-8200
- Georgia Dept. of Natural Resources, Environmental Protection Division, 205 Butler Street, S.E., Atlanta, GA 30334 (404)656-6900

HAWAII Hawaii Rev. Stat. §§165-1 to 4 (1990).

In 1982 Hawaii adopted a right to farm statute establishing a state policy to preserve and promote farming and to limit the circumstances when farming operations may be deemed a nuisance. Under the Hawaii law:

no court, official, public servant, or public employee shall declare any farming operation a nuisance for any reason if the following have been proven:

- (1) That the farming operation was not in violation of this section at its established date of operation;
- (2) That the stated or implied basis for the nuisance complaint is that conditions have changed in the vicinity of the farming operation since its established date of operation;
- (3) That the farm operation was lawfully in operation for at least one year prior to the nuisance complaint;
- (4) That the alleged nuisance did not result from the negligent conduct or improper operation of the farming operation; or from any aspect of the operation which is determined to be injurious to public health or safety; and
- (5) That the alleged nuisance does not involve water pollution or flooding.

In 1986 the law was amended to broaden the definition of "nuisance," discussed at p. 34. The law provides for different established dates for expansion of facilities, discussed at p. 31. The Hawaii statute has not been the subject of any court determinations.

Resources

- Hawaii Farm Bureau Fed., 2343 Rose St., Honolulu, HI 96819 (808)848-2074
- Hawaii Cattlemen's Council, Inc., Severn Waterfront Plaza #422, Honolulu, HI 96813 (808)526-0159



- Hawaii Pork Industry Ass'n, 87-1550 Kanahale Road, Waianae, HI 96792 (808)676-9100
- Hawaii Dept. of Health, 465 South King St., Honolulu, HI 96813 (808)548-6915

IDAHO Idaho Code §22-4501 to 4504 (1990)

In the 1940's the J.R. Simplot Company constructed a fertilizer plant approximately 300-400 yards from where others were constructing the Last Frontier Night Club. The fertilizer plant became a leading industry in the region and the largest employer but was involved in two nuisance suits. In McNichols v. J.R. Simplot Co., 262 P.2d 1012 (Idaho 1953), the lower court denied an injunction against the fertilizer plant and denied damages, but the Idaho Supreme Court overturned the ruling. In 1960 the Idaho Supreme Court decided Koseris v. J.R. Simplot Co., 352 P.2d 235 (Idaho 1960), in which the club was now used for storage. The district court effectively enjoined operation of the plant which by 1957 was a \$7,000,000 business employing 1,000 people with an annual payroll of \$1,242,000. On appeal the Idaho Supreme Court cited the importance of considering the comparable injury to the parties and the comparable social and economic benefits to the community in overturning the lower court ruling.

In 1981 Idaho enacted a right to farm law that protects agricultural operations from nuisance suits which arise due to changes in surrounding nonagricultural activities if the agricultural operation has been in operation for more than one year and was not a nuisance when it began. The law does not protect the agricultural operation if the nuisance results from improper or negligent operation. Any local ordinance in effect at the time of enactment of the right to farm law or enacted afterwards that would make an operation a nuisance is null and void. The right to farm law does not apply to agricultural operations which were located within the corporate limits of any city on March 31, 1981. The Idaho Court of Appeals considered the law in Carpenter v. Double R Cattle Co., 669 P.2d 643 (Idaho Ct. App. 1983), discussed at p. 54. The Idaho Supreme Court did not apply the law in a 1989 case involving cattle feeding on a non-conforming tract, Baxter v. City of Preston, 768 P.2d 1340 (Idaho 1989), discussed at p. 80. The case, which was not a nuisance but instead a zoning dispute, shows how the goal of a nuisance suit can be attained by other means.

Resources

- Idaho Farm Bureau Fed., 1001 N. 7th, Centennial Plaza, Pocatello, ID 83201-5797 (208)232-7914
- Idaho Cattle Ass'n, P.O. Box 15397, Boise, ID 83715-5397 (208)343-1615
- Idaho Dairy Council, Boise (208)327-7050
- Idaho Pork Producers Ass'n, 1741 Gibson Way, Meridian, ID 83642 (208)888-0988
- Idaho Dept. of Health and Welfare, Div. of Environment, 450 W. State St., Boise, ID 83720 (208)334-5879

ILLINOIS Ill. Ann. Stat. ch. 5 para. 1100-1105 (Smith-Hurd 1991)

Illinois courts have considered several agricultural nuisance cases. In Woods v.

